



International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General
6 April 2017

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2146/2012*, **

<i>Communication submitted by:</i>	Zhaslan Suleimenov (represented by counsel, Anara Ibraeva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	14 January 2011 (initial submission)
<i>Document references:</i>	Decision under rule 97 of the Committee's rules of procedure, transmitted to the State party on 20 April 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	21 March 2017
<i>Subject matter:</i>	Torture and ill-treatment of the author in detention
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture – prompt and impartial investigation; freedom of thought, conscience or religion; conditions of detention
<i>Articles of the Covenant:</i>	article 7, read in conjunction with articles 2, and articles 9, 10, 14 and 18
<i>Article of the Optional Protocol:</i>	2

* Adopted by the Committee at its 119th session (6 March-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

1. The author of the communication is Mr. Zhaslan Suleimenov, a Kazakhstan national born in 1976. He claims to be a victim of a violation by Kazakhstan of his rights under article 7, read in conjunction with articles 2, and articles 9, 10, 14 and 18, of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is represented by Ms. Anara Ibrayeva, of the Kazakhstan International Bureau on Human Rights and the Rule of Law (KIBHR).

The facts as presented by the author

2.1 The author submits that he is a disabled person on a wheelchair. On 5 January 2009, together with three companions, he travelled to the Russian Federation to undergo medical treatment in the city of Pyatigorsk.¹ On 8 January 2009, they were arrested near the city of Nalchik by special police force officers. They were taken to a local police station, where they were held throughout the night. On 9 January 2009, they were transferred to the Antiterrorism Centre in Nalchik city, where they were questioned about the purpose of their travel. Thereafter they were placed in a hotel² where they were de facto detained for one month until their extradition to Kazakhstan.

2.2 The author was repeatedly taken to the anti-terrorism police unit for interrogations, and two weeks before their deportation, he and his acquaintances were all questioned in the hotel. They were subjected to beatings and other forms of ill-treatment by officers of the Russian intelligence services in order to confess guilt to having organized a terrorist group. However, no criminal case was initiated against them and the Russian authorities decided to deport them back to Kazakhstan for violation of immigration rules.

2.3 The author submits that on 4 February 2009, he and those accompanying him were transported by a bus to the Russian-Kazakh border. On 5 February 2009, they were handed over to several masked officers of the National Security Committee (NSC) for the Atyrau region in Kazakhstan, who immediately started beating them, twisting forcibly their hand behind their back and using handcuffs, insulting and threatening them with long imprisonment terms. Officers also covered the author's and his companions' faces with their own winter hats which made breathing difficult and accused them of being "terrorists".

2.4 The author further submits that the group was subsequently transferred to Astana city. It took the authorities two days – from 5 to 7 of February 2009 – to transfer them from Atyrau to Astana city. During this time, the author was put in a car with his back on the car's cold window and was beaten on his paralyzed legs. Bags were put over their heads and they were deprived of food and not allowed to use toilets. The author further claims that he sustained bruises on his hands because the handcuffs were too tight and that the woolly hat covering his face made breathing difficult, as a result of which he lost consciousness several times.

2.5 On 7 February 2009, the author was transferred to the National Security Committee (the NSC) of Astana city. He was thrown to the floor, was kicked and beaten up and thereafter was put in a closed iron box called "the glass", where he nearly suffocated. Due to extremely low temperatures, the author suffered from frostbite. The beatings inflicted on his left leg caused a severe open injure which does not heal to this date. The lying on the cold floor resulted in an inflammation of his lungs. He also developed osteomyelitis of the left thigh. His requests for medical assistance were ignored by the investigation ward's medical unit. He was not allowed to use his wheelchair.

2.6 The author claims that on 7 February 2009, in order to force a confession that he organized a terrorist group; the author was interrogated until midnight in the Investigative Department of the NSC in Astana. He was brought back to the investigation ward of the NSC

¹ Pyatigorsk is a city in Stavropol Krai, in Caucasus, the Russian Federation.

² The exact location of this hotel has not been provided.

at 2 a.m. on 8 February 2009, where he was unlawfully detained for four days, without his detention being authorized by a court. On 10 February 2009, the Court No. 2 of the Almatinsk district of Astana city finally sanctioned his arrest.

2.7 On 21 January 2009, separately from the author, his brother was arrested for possession of explosives and two months later was also charged with organizing a terrorist group. On 7 February 2009, a criminal case was opened against the author and his brother under article 233-2, part 1, of the Criminal Code (“organizing, or leading a terrorist group and participating in its activities”). On 13 April 2009, new criminal charges were brought against them under article 233-1, part 1 (“supporting terrorism or calling for commission of an act of terrorism”). It was only on 11 February 2009 that the author was transferred to a pre-trial investigation centre of Astana city. He spent two months and a half in detention in a dark, bunker-type cell for prisoners convicted to life imprisonment in an attempt to obtain his confession.

2.8 The author was accused of preparations to commit terrorist acts in the Russian Federation. He allegedly formed “jamaat” – an illegal religious group, held several meetings at his place of residence with his acquaintances, showed films about executions of Russian military officers, about military operations in Caucasus and the alleged abuse of authorities against peaceful population of Chechen Republic. The authorities also claimed that he instructed the participants on making improvised explosive devices (IED). According to the investigation, a pneumatic weapon and ammunition were purchased at his order. He became the leader of the group, taught them religion and ideology, military and intelligence skills, as well as how to find literature on religious subjects, including through internet. He was also accused of influencing five of his acquaintances to travel to Russia in order to join the illegal armed groups headed by “Amir of Caucasian mujahidin”;³ planned the itinerary, split them into two groups which arrived in Russia using different itineraries, bought two SIM-cards in order to avoid telephone tapping, and forbade them from calling home.

2.9 The author complained of torture at the time of his first interrogation, on 7 February 2009. He claims, however, that nine months passed and by letter dated 20 November 2009, the Investigation Department of the NSC of Astana informed the author of its refusal to open a criminal case regarding his torture complaint, the decision being upheld by the prosecutor’s office. During the court proceedings, the author and his aunt petitioned on numerous occasions the prosecutor’s office and the court, claiming that the criminal case was fabricated, that the author was subjected to ill-treatment and that his arrest and detention were unlawful. He also requested on several occasions to be hospitalized in view of his poor health condition, but none of these requests was granted.

2.10 On 30 November 2011, the Court No. 2 of the Almatinsk district of Astana city sentenced the author and his brother to 8 years of imprisonment. On 11 December 2009, he filed an appeal with the Astana City Court, and supplemented his appeal on 23 December 2009. On 12 February 2010, the Astana City Court upheld the decision of the first instance court. The author’s aunt submitted a cassation appeal on 24 February 2010, which was rejected on grounds that she was not the author’s legal representative. The author himself failed to submit a cassation appeal. His applications for supervisory review were also unsuccessful.

2.11 The author claims that he has exhausted all domestic remedies. His failure to submit a cassation appeal is explained by the fact that he did not receive the decision of the Astana Court of 12 February 2010 immediately. According to article 420-1, paragraph 3, of the Criminal Procedure Code, a cassation appeal may be lodged within 15 days from the date of receipt of the decision of the appellate court. However, immediately after the deadline of 15 days expired, he was transferred, on 27 February 2010, to another prison located in a

³ No further information has been provided.

different region of Kazakhstan and could not physically prepare and lodge a cassation appeal. Moreover, in view of his legal ignorance and the absence of adequate legal aid by State-appointed lawyers, he was unable to prepare such an appeal without assistance.

The complaint

3.1 The author claims that he was subjected to torture and ill-treatment by the law enforcement officers, in violation of article 7 of the Covenant. He claims that he was held incommunicado and was not allowed to receive visits from relatives. The author further claims that he is being subjected to ill-treatment also in the prison facility where he is currently detained. A complaint to that effect was submitted by his aunt to the Prosecutor's office on 12 September 2011.

3.2 The author further submits that his rights under article 9 have also been violated. The court prolonged his detention repeatedly, ignoring his numerous requests to change the detention to a house arrest, due to his disability and poor health condition, and that he required special assistance. On 2 April 2009, the court extended his arrest for a period of three months on grounds that the proceedings could not be completed on time due to the delayed results of forensic examinations. Although he challenged this decision, the Astana City Court upheld it on 29 April 2009, without deciding the issue of lawfulness of his arrest. The pre-trial investigation was delayed by the authorities and as a result he spent eleven months in pre-trial detention, in violation of his right to be tried without undue delay.

3.3 The author also claims a violation of article 10 of the Covenant. He was subjected to ill-treatment and his requests for medical assistance were repeatedly rejected. The detention conditions are not adapted to the special needs of a person with disability and his health has deteriorated further.

3.4 He claims that his rights under article 14 have been violated. He submits that the courts failed to respect the principles of impartiality and equality of arms. Moreover, upon his arrest, he was treated by the officers of the Kazakhstan NSC as a criminal, in violation of his right to a presumption of innocence. He was also prevented from adequately defending himself. Due to the failure of his lawyer to defend him effectively, he refused his services and requested the court to appoint another lawyer.

3.5 The author also submits that his rights under article 18 have been violated. He was convicted for organizing a terrorist group on the basis of religious texts and other documents that were found in his possession. He claims that they were planted in his apartment by officers of the NSC. Moreover, during his transfer to Astana, Kazakhstan, officers were drinking alcohol and eating pork, inviting him to join. They used abusive language towards him and his religion.

State party's observations on admissibility and the merits

4.1 On 26 June 2012 and 8 November 2012, the State party provided its observations on admissibility and merits. The State party challenged the admissibility of the communication for several reasons.

4.2 Firstly, the State party contends that the *ratione temporis* principle should prevent the Committee from examining the case in the first place. The State party's obligations under the Optional Protocol came into force on 30 September 2009, and allegations submitted by the author occurred before this date.

4.3 The author's contention that the torture continues to this day, and allegations of torture by several police officers of the NSC for the Atyrau region have been examined by the State party, and could not be confirmed. Therefore, this part of the communication should be declared inadmissible.

4.4 Secondly, the author has failed to exhaust all domestic remedies. The author was detained on 9 January 2009 in the city of Nalchik in the Russian Federation. He was extradited to Kazakhstan, where he was wanted for committing several crimes, such as operating a terrorist organization, and illegal actions with weapons. The author was formally charged on 7 February 2009, and placed on pre-trial detention. On 2 April 2009, his detention was extended until 7 May 2009. On 13 April 2009, the author was charged with additional crimes, such as propaganda of terrorism or public calls to commit terrorist acts. The prosecutor's office finally sent his case to court on 30 June 2009. Meanwhile, all charges against other defendants, Mr. C.H., Mr. A.B., Mr. G.R., Mr. B.E., and Mr. S.M., were dropped based on article 65, paragraph 2, after these defendants cooperated with the investigation.

4.5 The author has not been tortured or pressured to confess guilt. Mr. C.H., Mr. A.B., Mr. G.R., Mr. B.E., and Mr. S.M. provided evidence based on their own free will, in the presence of their lawyers, and the interrogations were videotaped. On 30 November 2009, the author was sentenced to 8 years of imprisonment, to be served in a "strict regime" prison.

4.6 On 23 June, 14 July, and 21 October 2009, the author complained to the prosecutor's office regarding violation of his constitutional rights. His first two complaints did not contain any allegations of mistreatment. In accordance with the legislation, the prosecutor's office sent all these complaints to the court. Furthermore, on 12 February 2010, the author's appeal was rejected by the judicial panel for criminal cases of the Astana regional court. The author did not submit an appeal under supervisory review procedure to the Supreme Court of Kazakhstan.

4.7 The State party further submits that the author's aunt, Ms. S.M.M, submitted a complaint to the Prosecutor General's office on behalf of the author. On 7 December 2010 and 24 August 2011, the Prosecutor General refused to initiate a supervisory review protest to the Supreme Court. The author himself never submitted such a request.

4.8 Regarding the author's allegations of lack of medical assistance, the State party submits that the author received medical help whenever it was requested. The author uses a wheelchair, but otherwise, his health condition was assessed as "satisfactory". The State party draws the attention of the Committee to the fact that the author submitted 19 complaints to various government agencies. In these complaints, he disagrees with various aspect of the criminal prosecution against him, and with the court verdict. The author, however, never complained about conditions of his detention.

4.9 Currently, the author is being held in prison No. 166/4 in the city of Atbasar, where he has been disciplined twice for various violations of prison rules and regulations.

4.10 Commenting on the author's allegations regarding perceived threats in case of submitting a complaint to the Committee, the State party submits that such claims are only invented by the author to avoid the exhaustion requirements that the Committee imposes. The author therefore failed to exhaust all available domestic remedies, and his submission should be declared inadmissible.

4.11 On the merits, the State party submits that the prosecutor's office, as it is prescribed in the law, forwarded the author's complaints to the court. The court examined these complaints during hearings, and considered them to be "unfounded".⁴

4.12 On 28 December 2009, the Supreme Court of Kazakhstan issued an instruction No. 7, which obliges courts to task the prosecutor to conduct an examination on claims of "illegal methods of investigations". This instruction, therefore, is not applicable to the author's allegations, since the author's verdict was announced before adoption of this document.

⁴ The State party provides no further details on the courts considering the author's complaints.

4.13 As mentioned earlier, the author also complains about lack of access to medical assistance, which, he claims, continues to this day. On the date of arrival to the prison on 27 February 2010, the author was registered as a person with a disability. On 27 March 2010, he was brought to the Central Clinic No. 162/2 and was given necessary medical care. From 17 June 2010 to 9 September 2010, he was sent to the National Hospital No. 156/15. The doctors in the hospital raised a question of performing a surgery,⁵ but it was ultimately decided that such surgery was not needed and would be “ineffective” if performed.

4.14 The State party further denies allegations of torture and mistreatment. The Constitution explicitly prohibits torture. The Criminal Code of Kazakhstan also contains article 141-1 which prohibits torture.⁶ A person convicted for this crime could be sentenced from five to ten years of imprisonment. Furthermore, the Prosecutor General’s office adopted an instruction dated 2 February 2010, which imposes an obligation to investigate allegations of torture. Where such claims are found to be credible, the prosecutor’s office must bring criminal charges. As a result, number of torture complaints has increased during recent years.⁷

4.15 Furthermore, the authorities work to improve conditions of detention by building new detention centres in accordance with international standards. Accordingly, the access to medical care and legal services has been improving as well. The author has been provided with a full range of medical services that he needed, and was able to have access to his lawyer as well.

4.16 Regarding the author’s claims of ineffective investigation of his torture claims, the State party informs the Committee that the author did not submit any complaints during the criminal investigation.⁸ As for the court hearings, the State party submits that on 1 October 2009, the court heard testimony of Mr. T.A, an investigator with the NSC. The investigator testified that the author and witnesses were never subjected to any kind of pressure, or mistreatment. As it is obvious from the records of the criminal investigation, the author, and witnesses were questioned in the presence of their respective lawyers.

4.17 The laws of the Republic of Kazakhstan further foresee compensation of moral and material damage in case of unlawful actions of the law enforcement agencies.⁹

4.18 Regarding the author’s complaints about the length of his pre-trial detention, the State party informs the Committee that the time spent by the author in detention was justified by the necessity to conduct various forensic examinations. In addition, on 13 April 2009, the author was additionally charged with crimes under article 233-1, paragraph 1.

4.19 The State party examined the records of the trial hearings. It confirms that the author has asked for his restraint measure to be changed to a house arrest, citing his health issues. Upon an inquiry which was initiated by court, the administration of the detention centre told the court that the author has been receiving all necessary medical assistance. The court records also show that on 22 October 2009, the author called an ambulance to the detention center. The doctors, who arrived upon request, did not find it necessary to transport the author to a hospital.

⁵ The State party does not provide any specific details on the type of surgery, or why it was considered.

⁶ The State party also submits that on 21 November 2008, it ratified the Optional Protocol to the Convention against Torture, and from the end of 2012, created a national preventive mechanism. The representatives of national preventive mechanisms conducted 551 visits from 2010 to 2012.

⁷ According to the statistics provided by the State party, 14 such complaints were registered in 2009, 36 in 2010, 52 in 2011, and 298 in nine months of 2012. Starting from 2009 to 2012, 36 torture-related charges were brought.

⁸ As mentioned by the State party before, the complaint of 21 October 2009 has been forwarded to the court to consider.

⁹ Chapter 4 of the Criminal Procedure Code of Kazakhstan.

4.20 Additionally, court records show that the head of medical unit No. 166/1 testified, when questioned as a witness, that upon arrival to the detention center, the author was examined by several doctors. In addition to his disability, he was diagnosed with gastritis. Additionally, doctors confirmed that the author was suffering from bedsores, for which he was prescribed a treatment.¹⁰

4.21 On 18 February 2011, a special medical commission refused to release the author.¹¹ The author argued that he could not get proper medical assistance in prison. The medical commission came to conclusion that the author's condition was stable,¹² and that he has been receiving necessary medical care. In addition, the author was charged and sentenced for having committed a "particularly serious" crime. Moreover, when serving his sentence, the author was disciplined twice for violating internal rules and regulations.

4.22 In accordance with applicable rules, the author has been granted seven family visits – 3 long and 4 short ones. He also received eight parcels with different goods and items. The State party also submits that the author is able to practice his religion within limitations of article 12, paragraph 5, of the Criminal Execution Code.¹³ The author has never submitted any complaints regarding the prison administration.

4.23 Regarding the author's right to be present during the appeal hearings, in accordance with article 408, paragraphs 2 and 3, of the Criminal Procedure Code, the court has discretion whether to request presence of an appellant or not. An appellant is brought to court if the appeal is filed by the prosecution. The author's appeal dated 30 November 2009 was heard in the presence of the author's lawyer.

4.24 The State party further submits that starting from 1 July 2012;¹⁴ appellants also have an opportunity to file a cassation appeal. Regular appeals are brought before the verdict comes into force, and cassation appeals can be brought after the verdict comes into force. Both appeals have to be exhausted before the author can submit a supervisory review request to the Supreme Court. Based on everything mentioned above, the State party contends that there has been no violation of articles of the Covenant against the author.

Additional observations by the author

5.1 On 11 September 2012, 28 March 2013, 20 January, 4 June 2014 and 11 September 2014, and 19 February, 20 March, 12 June and 1 December 2015,¹⁵ as well as on 15 January, 1 February, 11 April and 6 January 2016, the author submitted additional information.. He argues, inter alia, that the State party's *ratione temporis* argument is not relevant in this case, since the violations of the articles of the Covenant continued after 30 September 2009 and to this date.

5.2 Regarding the exhaustion of domestic remedies, the author explains that his aunt submitted a supervisory review request to the Prosecutor's office, which was rejected. The author's brother and his co-defendant, Mr. Z.K., submitted a supervisory reviews request, which was rejected by the Supreme Court of Kazakhstan.

¹⁰ The State party mentions here again that the author filed 19 complaints during his pre-trial detention, arguing aspects of his criminal case, but never complained about conditions of his detention.

¹¹ The author's request to release was based on his medical condition.

¹² The State party also notes that the author became disabled well before his criminal prosecution.

¹³ "The religious practice is voluntary, and should not interfere with the prison's internal schedule, and violate the rights of other prisoners.

¹⁴ In accordance with article 446-1 of the Criminal Procedure Code.

¹⁵ Upon request made by the author alleging that the State party authorities are pressuring the author to withdraw his complaint, the Committee, acting through its Special Rapporteur on new communications and interim measures, asked the State party to prevent any "reprisals against the author, his family, witnesses and representatives as a result of the submission of the communication".

5.3 Regarding the State party's observations on the merits, the author submits that instead of conducting investigations upon his torture complaints, the authorities forwarded them to the court. The court did not conduct any investigations, but only questioned three law enforcement officers who denied any wrongdoing. Moreover, on 17 September 2009, during one of the court hearings, the court refused to admit one of the author's complaint letters. The judge simply stated that the author should address his complaints to the internal security service of NSC.¹⁶

5.4 The author contends that his first torture complaint was submitted during his initial interrogation on 7 February 2009, despite the State party's arguments to the contrary. To this complaint, the Deputy Prosecutor General simply responded that the facts of torture have not been confirmed.¹⁷ The State party's authorities ignored numerous complaints about beatings, insufficient food, and lack of access to medical assistance. On six different occasions, the authorities refused to initiate a criminal investigation regarding his complaints.¹⁸

5.5 The author further submits that he was in de-facto detention starting from 9 January 2009, but he was registered with the medical authorities only on 27 February 2010, and was only properly diagnosed on 5 April 2010. This proves that he did not receive appropriate medical care for more than a year. Despite significant medical problems, the author was prescribed to take analgesics. The author did not complain to doctors in the prison simply because he could not move independently.

5.6 Regarding the State party's contention about growing number of investigations of torture crimes, the author notes that the majority of these investigations do not lead to any prosecutions. For example, in 2012, out of 28 cases that were initiated, only five were sent to court.

5.7 The author further submits that he was assigned four different lawyers at different stages of the criminal case against him. All four lawyers proved to be useless, and did not defend him properly. For example, Ms. Z.H., his second lawyer, demanded 1,000 USD for her services, although she was paid by the government. During ten months in pre-trial detention center, the lawyers visited the author only twice.

5.8 The courts failed to consider his release pending trial due to his medical condition. The author brought this petition several times, but the court disregarded these requests. Only once, on 8 September 2009, the court addressed this issue by saying that the author is receiving all proper medical care at the detention facility.

5.9 The State party also failed to conduct an effective and impartial investigation into the author's torture claims. On 1 October 2009, the court questioned the senior investigator of the NCS for the city of Astana, Mr. T.A. This investigator testified that the author, other defendants and witnesses were never tortured or pressured in any way. As it required by the international standards, the State party cannot follow a formal approach in investigating torture claims, but instead, must make every effort to conduct a thorough and effective investigation.

5.10 The author was charged on 7 February 2009. Additional charges were brought against him three months later. The initial court decision to detain him pending trial and the subsequent decision to prolong his detention was based only on the gravity of charges. The court failed to consider all other circumstances of the author's case, including his health condition.

¹⁶ The author quotes from a record of court hearings.

¹⁷ The author attached the Deputy Prosecutor General's response dated 7 December 2010.

¹⁸ The dates of these decisions: 20 November 2009, 12 January 2010, 4 July 2012, 25 August 2012, 24 October 2012 (one of these six dates has not been indicated by the author). Additionally, the author contends that he learned about these decisions only in November or December, 2012.

5.11 Several times during the imprisonment, the author was placed in solitary confinement unit as a punishment. The explanation given by the prison administration was that he is prohibited to meet other prisoners, and that if allowed, he would disseminate his “terrorism” views. Currently, the author is being held in a solitary confinement unit of the medical section of the prison No. 166/18.¹⁹

5.12 The author’s religious freedoms were violated by the State party regularly. He was threatened not to pray regularly, and was pressured to denounce his religion. In prison, the author is registered as a prisoner who has committed crimes based on religion. The author, in an addendum to his appeal dated 23 December 2009, complained about violations of his religious freedoms.²⁰

5.13 The State party further claims that the author failed to exhaust all available domestic remedies, specifically, that he did not file a cassation and appeal, and thereafter, a supervisory appeal request to the Supreme Court. The provisions of the law establishing a cassation appeal came into force on 1 July 2012. The author’s communication to the Committee was submitted on 14 January 2011. The author contends, however, that his aunt did file a cassation appeal on his behalf. He personally could not file a cassation appeal, because the author had 15 days to file this appeal, but the appellate court did not provide a copy of its decision dated 27 February 2010. At the same time, the author was being transported to the place of imprisonment, and he could not physically prepare his cassation appeal.

5.14 Regarding a supervisory appeal procedure, the author contends that his brother and co-defendant, Mr. Z.K., did file a supervisory appeal request to the Supreme Court, which was rejected. Overall, the supervisory appeal procedure cannot be deemed as an effective domestic remedy. After the author’s aunt filed supervisory appeals with the prosecutor’s office on behalf of the author, she received two responses dated 7 December 2010 and 24 August 2011, where the prosecutor’s office refused to grant bringing a supervisory protest to the Supreme Court.

5.15 The author also submits that during his imprisonment in facility No. 162/4, he was subjected to harsh treatment. For example, on 6 September 2011, at 5a.m., Mr. E.S., one of the guards, along with two soldiers, stormed into the author’s cell, started yelling at him and searched his cell. When they didn’t find anything, Mr. E.S. threatened to place the author in the solitary confinement unit. On 8 September 2011, the deputy head of the prison, Mr. A.M., and other officers, came into the author’s cell, started insulting him, and said that he “pretends to be a disabled person”, and pushed him off his bed, suggesting that he can walk, and hit him against the wall, and took the author’s belongings, such as electric kettle, space heater, etc.

5.16 The author reiterates that he was tortured to confess guilt, and his co-defendants were also tortured to provide information against the author. Once such information was obtained, under duress, the defendants became witnesses. But even as witnesses, they admitted during the court hearings that they were pressured to testify against the author. Mr. G.R., one of the witnesses, testified in court that the law enforcement officers hung him “head down, electrocuted him, and put a screwdriver in his ear” so he had to confess.

¹⁹ Located in Zavodskoi village in Akmola region.

²⁰ The author also alleges that he was pressured to drop his communication to the Committee.

Further submissions by the State party

6.1 On 10 December 2013, 8 May, 5 August and 31 December 2014, as well as on 28²¹ January, 6 May, 31 July and 29 December 2015, and 12 January, 11 March, 19 August and 25 November 2016, the State party reiterated its observations on admissibility and merits.

6.2 The State party argues that the author failed to exhaust domestic remedies.²² The author's brother and co-defendant did file a supervisory appeal request, but the author was charged with additional crimes which makes his case different.

6.3 The State party further submits that as stated in its initial observations, the author was provided with all necessary medical care. His torture claims were examined, and it was ascertained that there was no mistreatment of the author, or witnesses.

6.4 The State party submits that on 23 September 2011, the Department on the fight against economic crimes and corruption received a complaint from the author. The author claimed that on 8 September 2011, the deputy head of the No. 162/4 prison in the Pavlodar region, Mr. A.M., and one of the officers, Mr. K.A. entered the author's cell and searched it, and in the process, "abused the author both morally and physically".²³ Mr. K.A. was questioned regarding this alleged incident. He confirmed that the author's cell was indeed searched, and "prohibited items" were discovered; no physical or other forms of pressure were used against the author. The authorities therefore refused to initiate a criminal investigation.

6.5 On 11 May 2014, the author was visited by a representative from the prosecutor's office and members of the National Preventive Mechanism. The author, who was at the time held in prison No. 166/18, was examined, and it was ascertained that he is receiving proper medical care.²⁴ On 21 April 2014, the author became aggressive and refused to return to his cell. The nurse who was assigned to him, Ms. P.U., filed a complaint against the author claiming that he insulted her. The authorities of the prison No. 166/18 provided their explanations, and it transpires from these documents that the author was never pressured or physically threatened or abused.

6.6 In August 2014, the author applied for an early release. On 26 September 2014, the criminal court of Akmola region rejected his request.²⁵

6.7 The State party further contends that the author was examined not only by penitentiary authorities, but also using private clinics, in June and September 2014. On several dates, such as 2 to 13 April 2013, 8 to 14 May 2014, and on 15 December 2015, refused to undergo a medical examination or a treatment.

6.8 Due to the fact that the author committed crimes based on his religious convictions, the officers of NSC held two conversations with him of "prophylactic nature". These conversations were held in the presence of the prison administration, and allegations of "pressure" on the author are unfounded.

²¹ The State party's submission dated 28 January 2015 is identical to the one dated 5 August 2014.

²² The State party acknowledges that two supervisory appeals were filed by the author's aunt, but not by the author himself.

²³ The State party provides no further details on this incident.

²⁴ The State party also submits that on 16 May 2013, the author was visited representatives of several NGOs, and they received no complaints from the author.

²⁵ The author appealed this decision, but his appeal was denied on 10 December 2014 by an appeals court and on 24 February 2015 by a cassation appeals court. The State party claims that the "seriousness of the crimes" committed by the author make him ineligible for application of new articles 6 and 14 of the Criminal Code of Kazakhstan (on "humanization").

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of investigation or settlement.

7.3 The Committee notes the State party's claim that the author failed to file a cassation appeal, and a request for a supervisory review before the Supreme Court of Kazakhstan. The Committee notes that the author's aunt submitted two supervisory review requests on behalf of the author, which were rejected by the Prosecutor's office on 7 December 2010 and 24 August 2011. Additionally, the Committee considers that filing requests for supervisory review to the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.²⁶ The State party has not shown, however, whether and in how many cases the petition to the president of the Supreme Court for supervisory review procedures were applied successfully in cases concerning torture and fair trial. Regarding the cassation appeal, the Committee notes that the procedure came into force only on 1 July 2012, that is, after the author submitted his claims to the Committee²⁷. Accordingly, the Committee concludes that it is not precluded by article 5, paragraph 2 (b) of the Optional Protocol from considering the communication.

7.4 The Committee further notes the State party's argumentation to the effect that the author's claims are inadmissible *ratione temporis*. The Committee observes that it is precluded *ratione temporis* from examining alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after that date, continue to have effects which in themselves constitute a violation of the Covenant²⁸ or an affirmation of a prior violation.²⁹ In this light, the Committee notes that the alleged violations under article 9 all occurred before entry into force of the Optional Protocol for the State party. The Committee is therefore precluded by the reasons of *ratione temporis* from considering this part of the author's claims.

7.5 Regarding the author's claims under article 7, read separately and in conjunction with articles 2 (3), the Committee notes that the author contends that the violations that he claimed in his initial submission to the Committee continue to this day. In this connection, the Committee notes that after the entry into force of the Optional Protocol, the author claimed

²⁶ Communication No. 836/1998, *Gelazauskas v. Lithuania*, para 7.4; Communication No. 1851/2008, para 8.3.; *Alexander Protoko and Andrei Tolchin v. Belarus*, Views of 1 November 2013, para. 6.5.; Communication No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; Communication No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility, 26 July 2011, para. 6.2.

²⁷ The Committee also notes the author's contention that his aunt filed a cassation appeal on his behalf on 24 February 2010 (see paragraph 2.10 *supra*), and his argument in paragraph 2.11, *supra*, that he only had 15 days to prepare his cassation appeal, but that during these days, he was being transferred to a prison from a detention facility.

²⁸ See, *inter alia*, communications No. 1367/2005, *Anderson v. Australia*, inadmissibility decision adopted on 31 October 2006, para. 7.3; No. 1633/2007, *Avadanov v. Azerbaijan*, Views adopted on 25 October 2010, para. 6.2; No. 2027/2011, *Kusherbaev v. Kazakhstan*, Views adopted on 25 March 2013, para. 8.2.

²⁹ See communication No. 2027/2011, *Kusherbaev v. Kazakhstan*, Views adopted on 25 March 2013, para. 8.3.

that he has been continuously subjected to torture and that his claims were never adequately addressed by the authorities. Additionally, the Prosecutor General's Office, on 7 December 2010 and 24 August 2011 (i.e., after the entry into force of the Optional Protocol for the State party), refused to bring a supervisory review motion to the Supreme Court or to otherwise verify the author's torture claims. In these circumstances, the Committee considers that it is not precluded by the reasons of *ratione temporis* from considering the present communication under article 7, read separately and in conjunction with articles 2 (3).

7.6 The Committee has noted the author's claims under articles 14 and 18 of the Covenant, see paragraphs 3.4 and 3.5 above. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, these allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.7 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims raising issues under article 7, read separately and in conjunction with articles 2 (3); and article 10 of the Covenant, declares them admissible and proceeds with their consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee first takes into consideration the author's allegations that he was, on a number of occasions, tortured and otherwise mistreated. The Committee notes that the author reported torture both to during his first official interrogation on 7 February 2009, and throughout the court trial. The Committee also notes that the author and his aunt provided the prosecutor's office and the courts with specific evidence of torture that the author suffered in the hands of the law enforcement officers, such as injuries to his legs, but this the torture claims were never adequately investigated. The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's inability to explain the alleged mistreatment on a number of occasions, due weight should be given to the author's allegations.

8.3 Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.³⁰ The Committee underscores two episodes from the multitude of the author's allegations. Firstly, the author complained about torture which allegedly occurred during his initial interrogation on 7 February 2009 aimed at force him to confess guilt. The Committee notes the author's allegations that he was beaten, and was not allowed to use his wheelchair. The author claims that he filed an immediate complaint. According to copies of responses by the authorities, on 20 March 2009,³¹ they simply rejected the author's allegations, without providing any explanations or conducting a formal investigation. On 10 April 2009, a similar letter rejecting the author's allegations was issued by the prosecutor's office, again, without any explanations³². In addition, on 23 April 2009, the author's request to investigate allegations of torture was rejected by the department of investigations of the NSC, again without providing any details or reasons for the rejection.

³⁰ See the Committee's general comments No. 20, para. 14, and No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 18.

³¹ Letter from the NSC Department in Astana.

³² Letter from a deputy city prosecutor of Astana.

Finally, the author's request to investigate his claims of torture was rejected by the Investigation Department of the NSC of the city of Astana in letter dated 20 November 2009.

8.4 Secondly, as admitted by the State party, a number of the author's complaints were directed to the court for it to consider the allegations, e.g. the author's complaints dated 25 September 2009 and 21 October 2009. The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State must investigate it promptly and impartially. Instead of conducting a prompt and impartial investigation into the author's claims of torture, however, the court simply questioned one of the investigators, who denied any wrongdoing against the author. The Committee notes that the material on file does not allow concluding that any prompt or impartial investigation was carried out into the allegations of torture, despite a number of verifiable complaints from the author himself, and from his aunt. In the absence of any other pertinent information, and in the circumstances of the present case, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7 of the Covenant, read separately and in conjunction with article 2 (3).

8.5 Lastly, the Committee must decide whether the author's treatment and the alleged lack of adequate medical assistance in detention amounted to a violation of his rights under article 10 (1). The author also complained that the court building, detention centres and prisons are not accessible to persons with disabilities, and that he was refused medical treatment on numerous occasions.

8.6 The State party contested these allegations by stating that the author received medical care when he requested it, and that the detention centres and prisons were provided with the necessary personnel, equipment and facilities to treat a disabled person. The records show that the author requires special medical attention, given his status as a disabled person. Additionally, the author required assistance with access to toilets and shower, and treatment to his long-standing medical issues, such as constant bedsores.

8.7 In this connection, the Committee notes that the State party is under an obligation to observe certain minimum standards of detention, which include the provision of medical care and treatment for sick prisoners, in accordance with rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It is apparent from the author's account that the pre-trial detention facilities, prisons and medical facilities where the author was held after the trial were not suited for a disabled person who is able to move only in a wheel-chair. The Committee further notes the author's claims that he was left alone in his cell without any meaningful activities, which caused numerous bedsores on his body. The author could not move independently and was not provided with continuous assistance even for his most basic needs. The Committee further notes that despite several examinations by the penitentiary medical specialists, he was not able to receive medical treatment adequate to his condition, that he continued suffering from lack of specialised medical care and medicine that he needed. On the basis of the information before it, the Committee finds that confining the author in such conditions constitutes a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 (1) of the Covenant.³³

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 7 read alone and in conjunction with article 2 (3), and article 10 (1) of the Covenant.

³³ See, for instance, communications No. 590/1994, *Trevor Bennet v. Jamaica*, Views adopted on 25 March 1999, paras. 10.7-10.8; No. 695/1993, *Devon Simpson v. Jamaica*, Views adopted on 31 October 2001, para. 7.2; No. 704/1996, *Steve Shaw v. Jamaica*, Views adopted on 2 April 1998, para. 7.1; and No. 734/1997, *Anthony McLeod v. Jamaica*, Views adopted on 31 March 1998, para. 6.4.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps: 1) to conduct a prompt and impartial investigation into the authors' allegations of torture and ill-treatment; 2) to provide the authors with adequate compensation; 3) provide the author with appropriate medical care and assistance considering his disability and medical condition, including permitting access to private doctors and nurses to examine and assist the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Views and disseminate them widely in the official languages of the State party.
